third party could not sue unless the promisee owed the third party beneficiary some "legal or equitable duty" which would be satisfied by performance of the promise. *Durnherr* v. *Rau,* 135 N. Y. 219. This would seem to eliminate donee—beneficiary. However, the existence of a *moral* duty was deemed sufficient. *Buchanan* v. *Tilden,* 158 N. Y. 109. Even though such duty would not be *satisfied* by performance. In the principal case POUND, J., said he could not "reconcile a decision in favor of the wife in *Buchanan* v. *Tilden,* based on the moral obligations arising out of near relationship, with a decision against the niece here on the ground that the relationship is too remote for equity's ken." Apparently the New York court is nearly prepared to say that if one thinks enough of another to make a gift there is sufficient "moral obligation" to bring the case within the rule. That of course would be equivalent to recognizing that the requirement of any sort of "obligation" in these cases is out of place. See 15 HARV. L. REV. 767; 27 YALE L. JOUR. 1008.

CORPORATIONS:—POWER OF ATTORNEY TO SELL SHARES LIMITED TO ONE STATE, INCLUDING POWER TO SELL SHARES IN A CORPORATION INCORPORATED IN ANOTHER STATE, OWNING PROPERTY IN THE FORMER STATE.—Plaintiff was the beneficial owner of shares in a corporation incorporated in Maine, to own and operate mines in Nevada, with offices in Boston, Massachusetts. Plaintiff and N had originally owned the mining property which had been transferred by them to the corporation in exchange for part of its stock, which, with other parts, was put in trust with B under a pooling agreement. The company became financially embarrassed and a controversy arose between plaintiff, N, and the company as to whether the mining property might not revert to N and the plaintiff. The mining operations had been practically suspended, and plaintiff had gone to Calgary, Alberta; N had brought suit against the company in his own name, and had had a conference with the attorney of the company looking to a settlement of his and the plaintiff's claims against it. Plaintiff was notified by N of the situation and under these circumstances plaintiff gave N a power of attorney to demand and receive sums due plaintiff "for or in respect of any shares, stock, or interest, which I may now or hereafter hold in any corporation," and "to sell and absolutely dispose of such shares," and "to act in relation to my estate and effects, real and personal" as fully as if personally present myself, but "this power of attorney to cover the state of Nevada only." N, under this power, sold plaintiff's interest in his shares in this Maine corporation, and plaintiff brings his bill to have the shares returned to him, on the ground the shares were not located in Nevada. *Held*: bill dismissed. *Warner* v. *Brown,* (Mass. 1918), 121 N. E. 69.

The court, by RUGG, C. J., says that the limitation in the power of attorney indicates that it "is to be exercised as to property either physically located within that state or deriving its value from ownership of property physically located" therein. The court recognizes that generally, the property of the shareholder in his shares is distinct from the property of the corporation, and the *situs* of shares is at the residence of the owner, or at the domicile of the corporation, yet in a remote sense a certificate of stock is "an interest in the

property of the corporation, which might be in other states than either the corporation or the certificate of stock," citing *Hatch* v. *Reardon* (1907), 204 U. S. 152, 161. This holds that the New York two cent stamp tax on the transfer of certificates of stock which are actually present in New York is not unconstitutional, because the corporation or its property is located elsewhere, and the court said the "immediate object of sale was the certificate of stock; * * * in a remote sense, the membership or share which the certificate made attainable; * * * more remotely still, an interest in the property of the corporation," yet this does not make the sale a transaction of interstate or foreign commerce, even if the corporation is, and the seller and buyer reside, out of the state."

The court, however, concludes that in this case, "a fair interpretation" of the terms of the power of attorney made it effective "respecting all properties which derive their value from real or personal estate located within the state of Nevada," whether owned directly, or indirectly through stock ownership in a corporate owner. This seems to be a rather forced construction, and greatly stretches the quotation from the *Hatch* case above. Nothing but the circumstances surrounding the transaction can justify the decision, if that is sufficient.

DEEDS—DELIVERY—MANUAL TRANSFER TO GRANTEE UNNECESSARY.—When defendant was six years old and living with K as a member of his family a deed of certain land was prepared by K and placed in his safe in an envelope indorsed in defendant's name. Defendant had access to this safe from childhood. There was evidence that K had declared that the land was defendant's, that he, K, was only an overseer, and that he had acquiesced in acts of ownership by defendant. One witness testified that K told him to go after K's death to the safe with defendant and take out the papers, one addressed to witness and one to defendant. The will of K did not purport specifically to dispose of the land described in the deed. In an action of ejectment by K's heirs it was *held* that the deed to defendant had been delivered. *Kanawell* v. *Miller* (Pa., 1918) 104 Atl. 861.

Undoubtedly courts are coming to appreciate more and more that delivery does not depend upon any particular formality, that a deed has been delivered whenever there is satisfactory proof that the maker has evinced his intention that the instrument shall be as to him a completed legal act. See 16 MICH. L. REV. 580, *et seq.*, and Professor H. T. Tiffany in 17 MICH. L. REV., 103, *et. seq.* Obviously an actual handing over of the document to the grantee or to some third party for the grantee is of the very best sort of evidence to show such intention. However, such a transfer if the requisite intention is lacking is not necessarily a delivery. See *Curry* v. *Colburn*, 99 Wis. 319; *Tewksbury* v. *Tewksbury*, 222 Mass. 595. Normally a deed which has remained under the physical control or in the possession of the maker has not become operative for lack of delivery, but there are many cases wherein, as in the principal case, the courts have found sufficient evidence of the necessary intention despite such continued control or possession. See the many cases cited in note 8, 17 MICH. L. REV. 105.